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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/053,867	01/18/2002	Joseph G. Buchl	43314/236951	5358
826 7590 08/19/2008 ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			EXAMINER SHEPARD, JUSTINE E	
			ART UNIT 2623	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/053,867

Applicant(s)

BUEHL ET AL.

Examiner

Justin E. Shepard

Art Unit

2623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 5/6/08 have been fully considered but they are not persuasive.

Page 8, paragraph beginning with "Applicant submits that the term":

The applicant argues that the term "application" has a well known definition in the art, which is shown in the exhibits submitted by the applicant (definitions in Microsoft and IEEE technical dictionaries). While the Microsoft dictionary gives a straight forward computer programming definition of the term, the IEEE lists more general definitions.

IEEE Definition (1) The use to which a computer system is put, for example, a payroll application, an airline application, or a network application.

In Flickinger, the application taught is the advertisement processing (paragraphs 54 and 56), which refer to whether or not the ad should be stored and/or how the ad will be displayed. While the ad vector disclosed by Flickinger may not be a full fledged computer program (such as Microsoft Office) as suggested by the Microsoft dictionary, the examiner still interprets an application program as being a generic term that is met by Flickinger.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

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Claims 1-8 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 1-8 define an asset, which is a type of signal as interpreted by the examiner. The asset needs to fall into a statutory class to be considered statutory.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5, 6, 7, 9, 10, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flickinger in view of Del Sesto.

Referring to claim 1, Flickinger discloses an asset having a structure (figure 7, part 717; paragraph 54) combining both related content and data for distribution and service implementation in a digital cable system (figure 7), comprising:

a metadata object (paragraph 54; figure 7, part 707), wherein the metadata object comprises an application identifier identifying an application program associated with processing the asset (paragraphs 56 and 74) and;

a content object (paragraph 62; figure 7, part 709), wherein the content object represents data to be stored based upon instructions originating from the application

program as a result of interpreting the metadata object (paragraphs 54 and 56) and wherein the metadata object identifies the content object (paragraph 54).

Flickinger does not disclose an asset wherein the structure is understood by the application identified by the application identifier.

In an analogous art, Del Sesto teaches an asset wherein the structure is understood by the application identified by the application identifier (column 9, lines 25-50).

At the time of the invention, it would have been obvious for one of ordinary skill in the art to add the application header taught by Del Sesto to the asset disclosed by Flickinger. The motivation would have been to allow for the receiver to easily and quickly check for updates to the application which might have occurred.

Referring to claim 5, Flickinger discloses an asset of claim 1, wherein the content object represents data selected from the group comprising an MPEG file (paragraph 61), an executable file, an HTML page, and a JPEG image.

Referring to claim 6, Flickinger discloses an asset of claim 1, wherein the metadata object identifies the content object (paragraph 54).

Flickinger does not disclose a system wherein the content object is identified as a movie.

The examiner takes official notice that it is notoriously well known in the art to use metadata to identify content as a movie. At the time of the invention it would have

been obvious for one of ordinary skill in the art modify the metadata disclosed by Flickinger to identify the content to be a movie or any other type of content. The motivation would have been that providing the additional information would enable the system to store and retrieve data more efficiently, therefore saving time when performing the related actions.

Referring to claim 7, Flickinger discloses an asset of claim 1, further comprising a machine readable description identifying the metadata object and the content object (paragraphs 54 and 74).

Referring to claim 9, Flickinger discloses a digital cable system that receives and delivers content and data related to the content (figure 7, part 717; paragraph 54) to facilitate service implementation in a digital cable system (figure 7), comprising:

a staging server that receives an asset having a structure from a content provider (figure 7, part 701; paragraph 42), wherein the asset comprises both the content and the data related to the content (paragraph 54), the data related to the content further comprising an application identifier (paragraph 56).

Flickinger does not disclose a system with a content server storing the content and in communication with a subscriber set-top box for providing the content to the set-top box; and

a first application program configured to process a machine readable description file and the application identifier to identify a second application program understanding

the structure of the asset, wherein the second application program interprets the data related to the content, and wherein the second application program identifies a server that receives the content from the staging server.

In an analogous art, Del Sesto teaches a system with a content server storing the content and in communication with a subscriber set-top box for providing the content to the set-top box (figure 1); and

a first application configured to process a machine readable description file (column 9, lines 29-32) and the application identifier to identify a second application understanding the structure of the asset (column 9, lines 43-47), wherein the second application interprets the data related to the content (column 9, lines 43-47), and wherein the second application identifies a server that receives the content from the staging server (column 9, lines 34-36).

At the time of the invention it would have been obvious for one of ordinary skill in the art to add the application header taught by Del Sesto to the asset disclosed by Flickinger. The motivation would have been to allow for the receiver to easily and quickly check for updates to the application which might have occurred.

Referring to claim 10, Flickinger discloses a system of claim 9, further comprising an asset management system comprising the first application program processing the data related to the content to identify the application program associated with the application identifier (figure 7, parts 719, 721 and 723).

Referring to claim 11, Flickinger discloses a system of claim 10, wherein the asset management system maintains a database associating the content and the data related to the content using the machine readable description file (paragraph 58).

Claims 12-16 and 19-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flickinger in view of Del Sesto as applied to the claims above, and further in view of Carles.

Referring to claim 12, Flickinger and Del Sesto do not disclose a system of claim 10, wherein the asset management system resides between the application program and the staging server such that the staging server and application program are in indirect communication.

In an analogous art, Carles teaches a system of claim 10, wherein the asset management system resides between the application program and the staging server such that the staging server and application program are in indirect communication (figure 5; column 9, lines 22-36).

At the time of the invention it would have been obvious for one of ordinary skill in the art to add the node addressing taught by Carles to the system disclosed by Flickinger and Del Sesto. The motivation would have been to enable sending less data to certain areas by only sending the appropriate data to the appropriate nodes (Flickinger: paragraph 30, lines 11-16).

Referring to claim 13, Flickinger and Del Sesto do not disclose a system of claim 10, wherein the asset management system is operable to instruct the content server to request at least a portion of the content from the staging server.

In an analogous art, Carles teaches a system of claim 10, wherein the asset management system is operable to instruct the content server to request at least a portion of the content from the staging server (column 4, lines 18-23).

At the time of the invention it would have been obvious for one of ordinary skill in the art to add the node addressing taught by Carles to the system disclosed by Flickinger and Del Sesto. The motivation would have been to enable sending less data to certain areas by only sending the appropriate data to the appropriate nodes (Flickinger: paragraph 30, lines 11-16).

Referring to claim 14, Flickinger and Del Sesto do not disclose a system of claim 9, wherein the application is operable to identify the content server based upon the data related to the content.

In an analogous art, Carles teaches a system of claim 9, wherein the application is operable to identify the content server based upon the data related to the content (column 3, lines 16-28).

At the time of the invention it would have been obvious for one of ordinary skill in the art to add the node addressing taught by Carles to the system disclosed by Flickinger and Del Sesto. The motivation would have been to enable sending less data

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to certain areas by only sending the appropriate data to the appropriate nodes
(Flickinger: paragraph 30, lines 11-16).

Referring to claim 15, Flickinger and Del Sesto do not disclose a system of claim 9, wherein the content server receives at least a portion of the content from the staging server.

In an analogous art, Carles teaches a system of claim 9, wherein the content server receives at least a portion of the content from the staging server (column 3, lines 16-28).

At the time of the invention it would have been obvious for one of ordinary skill in the art to add the node addressing taught by Carles to the system disclosed by Flickinger and Del Sesto. The motivation would have been to enable sending less data to certain areas by only sending the appropriate data to the appropriate nodes
(Flickinger: paragraph 30, lines 11-16).

Referring to claim 16, Flickinger does not disclose a system of claim 9, wherein the content server requests the at least a portion of the content from the staging server using File Transfer Protocol (FTP).

The Examiner takes Official Notice that it is notoriously well known in the art to use FTP to transfer files on a communication network.

At the time of the invention it would have been obvious for one of ordinary skill in the art to use FTP to connect up the components disclosed by Flickinger. The

motivation would have been to use a well known protocol to keep development costs down.

Claim 19 is rejected on the same grounds as claim 9, 10 and 15.

Claims 20 and 21 are rejected on the same grounds as claim 15.

Claim 22 is rejected on the same grounds as claims 10 and 13.

Referring to claim 23, Flickinger does not disclose a method of claim 20, wherein the step of examining the related data by the application further comprises the step of identifying at least one server of a plurality of servers that should receive at least a portion of the content based upon rules associated with the application.

In an analogous art, Del Sesto teaches a method of claim 20, wherein the step of examining the related data by the application further comprises the step of identifying at least one server of a plurality of servers that should receive at least a portion of the content based upon rules associated with the application(column 9, lines 25-50).

At the time of the invention, it would have been obvious for one of ordinary skill in the art to add the application header taught by Del Sesto to the asset disclosed by Flickinger. The motivation would have been to allow for the receiver to easily and quickly check for updates to the application which might have occurred.

Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flickinger in view of Del Sesto as applied to the claims above, and further in view of Hall.

Referring to claim 2, Flickinger and Del Sesto do not disclose an asset of claim 1, further comprising an embedded asset, such that the asset is recursive.

In an analogous art, Hall teaches an asset of claim 1, further comprising an embedded asset, such that the asset is recursive (figure 6).

At the time of the invention it would have been obvious for one of ordinary skill in the art to add the recursive asset, comprising at least one embedded object, taught by Hall in the system disclosed by Flickinger and Del Sesto. The motivation would have been to allow for one file to contain multiple programs, therefore simplifying the transmission process.

Referring to claim 3, Flickinger and Del Sesto do not disclose an asset of claim 2, wherein the embedded asset further comprises at least one embedded content object.

In an analogous art, Hall teaches an asset of claim 2, wherein the embedded asset further comprises at least one embedded content object (figure 6).

At the time of the invention it would have been obvious for one of ordinary skill in the art to add the recursive asset, comprising at least one embedded object, taught by Hall in the system disclosed by Flickinger and Del Sesto. The motivation would have been to allow for one file to contain multiple programs, therefore simplifying the transmission process.

Referring to claim 4, Flickinger and Del Sesto do not disclose an asset of claim 2, wherein the embedded asset further comprises at least one embedded metadata object.

In an analogous art, Hall teaches an asset of claim 2, wherein the embedded asset further comprises at least one embedded metadata object (figure 6, "PROPERTY 3").

At the time of the invention it would have been obvious for one of ordinary skill in the art to add the recursive asset taught by Hall in the system disclosed by Flickinger and Del Sesto. The motivation would have been to allow for one file to contain multiple programs, therefore simplifying the transmission process.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Flickinger in view of Del Sesto as applied to the claims above, and further in view of Bergman.

Referring to claim 8, Flickinger and Del Sesto do not disclose an asset of claim 7, wherein the machine readable description comprises XML.

In an analogous art, Bergman teaches an asset of claim 7, wherein the machine readable description comprises XML (column 14, lines 58-67).

At the time of the invention it would have been obvious for one of ordinary skill in the art to use XML for the metadata, as taught by Bergman, in the system disclosed by Flickinger and Del Sesto. The motivation would have been to use a well known description language so that it would be simpler for people to create metadata for the content.

Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flickinger in view of Del Sesto as applied to claim 9 above, and further in view of Chen.

Referring to claim 17, Flickinger and Del Sesto do not disclose a system of claim 9, wherein the application comprises a provisioning user interface to allow a user to identify the at least one server to receive at least a portion of the content.

In an analogous art, Chen teaches a system of claim 9, wherein the application comprises a provisioning user interface (figure 7, parts 508 and 510) to allow a user to identify the at least one server to receive at least a portion of the content (column 7, lines 10-14).

At the time of the invention it would have been obvious for one of ordinary skill in the art to add the UI taught by Chen to the system disclosed by Flickinger and Del Sesto. The motivation would have been to enable the data to be further customized at the headend, therefore allowing data to be changed on an as needed basis.

Referring to claim 18, Flickinger and Del Sesto do not disclose a system of claim 17, wherein the provisioning user interface allows a user to specify rules for distributing at least a portion of the content to the content server.

In an analogous art, Chen teaches a system of claim 17, wherein the provisioning user interface allows a user to specify rules for distributing at least a portion of the content to the content server (column 7, lines 10-14).

At the time of the invention it would have been obvious for one of ordinary skill in the art to add the UI taught by Chen to the system disclosed by Flickinger and Del Sesto. The motivation would have been to enable the data to be further customized at the headend, therefore allowing data to be changed on an as needed basis.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin E. Shepard whose telephone number is (571) 272-5967. The examiner can normally be reached on 7:30-5 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Chris Kelley/

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Supervisory Patent Examiner, Art
Unit 2623

JS